

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

FORMAL COMPLAINT NO. 73

HON. JAMES P. NOECKER

Judge, 45th Circuit Court
Centreville, MI 49032

Concurring Opinion

We concur in the majority opinion and in the recommendation that Respondent be removed from office, but write separately because we would recommend that Respondent be ordered to pay both the costs of his prosecution and also the costs incurred by the taxpayers, if any, for visiting judges who have replaced him during his suspension.

After the master found evidence of misconduct in this case, the Commission petitioned for Respondent's interim suspension. On June 1, 2004, by order of our Supreme Court, the Commission's petition for interim suspension was granted and Respondent was suspended with pay. We believe that the dynamic of these proceedings shifted at that time. As a result of that order, the 45th circuit court has had to rely on visiting judges, and the taxpayers may have been compelled to pay costs for Respondent's replacement.¹ We are concerned about the lack of incentive for a respondent to cooperate with this process and even to drag out the proceedings because to do so is financially advantageous. When judges are suspended with pay after a finding of misconduct, we believe they should be on notice that they may need to account for any unwarranted expense to the taxpayers in the event that finding is upheld and removal from

¹ We recognize that the cost of replacing a suspended judge will vary from case to case and will depend, in some measure, on the size of the particular court at issue. In some instances the taxpayers may only incur the cost of parking or mileage, in others the taxpayers may need to pay a wage differential. A determination of those actual costs must be determined on a case by case basis. In any case, we do not believe that the burden of paying those costs should be placed on the taxpayers if the judge is ultimately removed from office.

office is ultimately ordered. Under the circumstances here, we find no rationale to justify placing a burden on the taxpayers for both the cost of Respondent's salary during his suspension and the costs incurred because visiting judges were needed to replace him.

Thus, in addition to the censure recommended by the majority opinion, we would also recommend that the matter be referred to the Supreme Court Administrator's Office for a determination of the costs incurred for visiting judges after Respondent's June 1, 2004, suspension.

**STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION**

James Mick Middaugh, Chairperson

Richard D. Simonson, Secretary

Hon. Michael J. Talbot

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